STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
(GLEICHER, CAVANAGH, FORT HOOD)

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LONNIE ARNOLD,

Defendant-Appellee.
_____/

Supreme Court No. 154764

Court of Appeals No. 325407

Monroe Circuit Court No. 13-40406

BRIEF OF AMICUS ATTORNEY GENERAL IN SUPPORT OF MONROE COUNTY PROSECUTOR

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

In its April 5, 2017 order granting leave on the merits of the prosecution's application, the Court identified three questions for review:

1. Whether MCL 750.335a(2)(c) requires the mandatory imposition of "imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life" for a person who commits the offense of indecent exposure by a sexually delinquent person, or whether the sentencing court may impose a sentence within the applicable guidelines range.

Appellant's answer:	The sentencing court may impose a sentence within the applicable guidelines range.
Appellee's answer:	Section 335a(2)(c) is mandatory.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Section 335a(2)(c) is mandatory.
Attorney General's answer:	**The sentencing court may impose a sentence within the applicable guidelines range.**

2. Whether the answer to this question is affected by this Court's decision in *People v Lockridge*, 498 Mich 358 (2015), which rendered the sentencing guidelines advisory.

Appellant's answer:	No.
Appellee's answer:	Yes.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Yes.
Attorney General's answer:	**No.**

3. Whether *People v Campbell*, 316 Mich App 279 (2016), was correctly decided.

Appellant's answer:	No.
Appellee's answer:	Yes.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Yes.
Attorney General's answer:	**No.**

STATUTES INVOLVED

The indecent exposure statute, **MCL 750.335a**, reads in pertinent part:

(1) A person shall not knowingly make any open or indecent exposure of his or her person or of the person of another.

(2) A person who violates subsection (1) is guilty of a crime, as follows:

> (a) Except as provided in subdivision (b) or (c), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than $1,000.00, or both.
>
> (b) If the person was fondling his or her genitals, pubic area, buttocks, or, if the person is female, breasts, while violating subsection (1), the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.
>
> (c) If the person was at the time of the violation a sexually delinquent person, the violation is punishable by imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life.

The indeterminate sentencing statute, **MCL 769.8**, provides as follows:

(1) When a person is convicted for the first time for committing a felony and the punishment prescribed by law for that offense may be imprisonment in a state prison, the court imposing sentence shall not fix a definite term of imprisonment, but shall fix a minimum term, except as otherwise provided in this chapter. The maximum penalty provided by law shall be the maximum sentence in all cases except as provided in this chapter and shall be stated by the judge in imposing the sentence.

The pertinent provisions of the sentencing guidelines, **MCL 777.16q** and **MCL 777.21**, provide:

> Sec. 16q. This chapter applies to the following felonies enumerated in chapter 750 of the Michigan Compiled Laws:
>
> | M.C.L. | Category | Class | Description | Stat Max |
> |---|---|---|---|---|
> | | | | * * * | |
> | 750.335a(2)(c) | Person | A | Indecent exposure by sexually delinquent person | Life |
> | | | | * * * | |
>
> Sec 21. (1) Except as otherwise provided in this section, for an offense enumerated in part 21 of this chapter, determine the recommended minimum sentence range as follows:
>
> > (a) Find the offense category for the offense from part 2 of this chapter. From section 222 of this chapter, determine the offense variables to be scored for that offense category and score only those offense variables for the offender as provided in part 43 of this chapter. Total those points to determine the offender's offense variable level.
> >
> > (b) Score all prior record variables for the offender as provided in part 54 of this chapter. Total those points to determine the offender's prior record variable level.
> >
> > (c) Find the offense class for the offense from part 2 of this chapter. Using the sentencing grid for that offense class in part 65 of this chapter, determine the recommended minimum sentence range from the intersection of the offender's offense variable level and prior record variable level. The recommended minimum sentence within a sentencing grid is shown as a range of months or life.

INTRODUCTION

The plain text of MCL 750.335a(2)(c) requires a sentencing court to impose a punishment on a person convicted of indecent exposure while a sexually delinquent person—it says "the violation *is* punishable"—but it also gives the court discretion to choose "*an* indeterminate term." MCL 750.335a(2)(c) (emphases added.) By using the word "an," the Legislature conveyed some discretion to sentencing courts; it did not specify that courts must impose "*the* sentence of 1 day to life." Rather, read in light of the discretion-granting phrase "an indeterminate term," the minimum-maximum clause of § 335a—"the minimum of which is 1 day and the maximum of which is life"—sets the outer boundaries for the permissible range of indeterminate sentences that could be chosen. And recognizing that § 335a is a discretionary statute makes sense of the fact that the Legislature has included it, repeatedly, in the sentencing guidelines. After all, if § 335a mandates that a sentencing court always impose a 1-day-to-life sentence, then it would make no sense to include it in the guidelines, as the appropriate sentence would already be fixed in stone.

Interpreting § 335a as mandatory also reads its plain text as imposing a Hobson's choice: the sentencing judge is free to choose any indeterminate sentence, so long as the judge chooses the specific indeterminate sentence of 1 day to life. But as courts have often recognized, reading a statute as imposing a Hobson's choice is not a reasonable interpretation. Accordingly, because a sentence of 25 to 70 years is an indeterminate sentence within § 335a's boundaries (it is at least one day and does not exceed life), the sentence here should be affirmed.

STATEMENT OF FACTS AND PROCEEDINGS

The Attorney General as amicus adopts the statement of facts and proceedings in the Monroe County prosecutor's merits brief.

LEGAL BACKGROUND

In 1952, the Legislature amended the statutes on indecency and immorality, creating new offenses for crimes of indecency committed by "sexually delinquent person[s]." 1952 PA 73; see also MCL 750.10a (defining "sexually delinquent person"). It did so by engrafting a clause into the various indecency and immorality statutes stating that if the offender was a sexually delinquent person at the time of the underlying offense, he or she may be punishable for an indeterminate term, with a minimum of one day to a maximum of life in prison. For instance, following the 1952 amendment, the indecent-exposure statute read:

> Any person who shall knowingly make any open or indecent exposure of his or her person or of the person of another shall be guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than 1 year, or by a fine of not more than $500.00, *or if such person was at the time of the said offense a sexually delinquent person, may be punishable by imprisonment in the state prison for an indeterminate term, the minimum of which shall be 1 day and the maximum of which shall be life*[.] [Former MCL 750.335a (emphasis added); see also 1952 PA 73.]

In conjunction with these amendments, the Legislature also enacted a new provision: MCL 767.61a. See 1952 PA 234. As this Court would later explain, § 61a was "the major procedural pronouncement" in the sexual delinquency statutory scheme, "provid[ing] for a separate hearing and record, involving psychiatric and expert testimony on the question. Even where defendant pleads guilty, the court is ordered to separately investigate the charge of sexual delinquency." *People v*

Helzer, 404 Mich 410, 418–419, 418 n 12 (1978)(footnote omitted), overruled in part on other grounds by *People v Breidenbach*, 489 Mich 1 (2011).

In 1998, the Legislature enacted the legislative sentencing guidelines. See 1998 PA 317. The Legislature included indecent exposure by a sexually delinquent person in the list of offenses for which trial courts were required to apply the sentencing guidelines, designating it as a Class A offense. See 1998 PA 317; MCL 777.16q. In doing so, the Legislature did not remove or otherwise revise the punishment language in § 335a. At the same time it included § 335a in the guidelines, the Legislature chose not to include other statutes permitting an enhanced sentence for a sexually delinquent person. E.g., MCL 750.158 (sexual offense not added to guidelines).

In 2005, the Legislature amended the indecent-exposure statute to add aggravated indecent exposure. See 2005 PA 300. Taking what was a single, bulky sentence in § 335a, the Legislature carved it up into reader-friendly subsections. Section 335a now states in subsection (1) the underlying indecent exposure offense before listing in subsection (2) the two circumstances that aggravate a simple misdemeanor to a felony: aggravated indecent exposure (a two-year misdemeanor) and indecent exposure by a sexually delinquent person (an indeterminate term, the minimum of which is one day and the maximum of which is life). See MCL 750.335a. And, in revising the statute, the Legislature changed "may be punishable" to "is punishable" in the clause setting forth the punishment for

indecent exposure by a sexually delinquent person. MCL 750.335a(2)(c). After the 2005 amendment, § 335a read:

> (1) A person shall not knowingly make any open or indecent exposure of his or her person or of the person of another.
>
> (2) A person who violates subsection (1) is guilty of a crime, as follows:
>
> > (a) Except as provided in subdivision (b) or (c), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than $1,000.00, or both.
> >
> > (b) If the person was fondling his or her genitals, pubic area, buttocks, or, if the person is female, breasts, while violating subsection (1), the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.
> >
> > (c) If the person was at the time of the violation a sexually delinquent person, the violation is punishable by imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life.

In a companion bill tie-barred to the legislation that amended § 335a, the Legislature also amended MCL 777.16q, a provision in the sentencing guidelines enumerating offenses to which the guidelines apply. See 2005 PA 302 (stating that it "does not take effect unless House Bill 4597 (which revised § 335a) . . . is enacted into law"). In addition to adding aggravated indecent exposure to the list of enumerated offenses, the Legislature affirmatively kept indecent exposure by a sexually delinquent person as a Class A guidelines offense by updating the statutory citation to MCL 750.335a(2)(c), in light of the accompanying amendments to § 335a. *Id.*

Several years later, in resolving the conflict between the then-mandatory sentencing guidelines and the punishment set forth in § 335a, this Court held that the sentencing guidelines controlled. *People v Buehler*, 477 Mich 18, 24 n 18 (2007) ("We agree with the panel in *Buehler II* that the Michigan Sentencing Guidelines control over the version of MCL 750.335a in force when defendant committed his crime.").

STANDARD OF REVIEW

Issues of statutory interpretation are questions of law that this Court reviews de novo. *People v Garrison*, 495 Mich 362, 366 (2014).

ARGUMENT

I. Section 335a gives the trial court discretion to pick "an indeterminate term," and does not then take away that discretion by imposing a Hobson's choice to pick a specific sentence.

The relevant text of § 335a provides that committing indecent exposure while a sexually delinquent person "is punishable by imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life." MCL 750.335a(2)(c). These words convey a plain meaning—that a judge must sentence the prisoner to an indeterminate sentence that is at least one day long and that is not more that life. The sentence given here—25 to 70 years—satisfies that text.

A. The words "an indeterminate term" give the trial court discretion to choose which indeterminate term it will impose.

The statute directs the judge to sentence the defendant to "an indeterminate term." These words have a plain, ordinary meaning. The word "an" is an *indefinite* article, which means that the required punishment is not referring to one *specific* punishment but rather to one of several possible punishments. As this Court has explained many times, the words " '[t]he' and 'a' have different meanings. 'The' is defined as 'definite article. 1. (used, [especially] before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an). . . .' " *Robinson v City of Lansing*, 486 Mich 1, 14 (2010), quoting *Random House Webster's College Dictionary*, p 1382; see also *Massey v Mandell*, 462 Mich 375, 382 n 5 (2000). This Court "must follow these distinctions between 'a' and 'the' because the Legislature has directed that '[a]ll words and phrases shall be construed and understood according to the common and approved usage of language.' " *Robinson*, 486 Mich at 14 n 13 (quoting MCL 8.3a).

Emphasizing this distinction, this Court has explained that "sources uniformly define 'an' as an indefinite article" and has noted that " 'an' is an indefinite article often used in the sense of 'any' and applied to more than one individual object; whereas 'the' is an article which particularizes the subject spoken of.' " *Allstate Ins Co v Freeman*, 432 Mich 656, 698 (1989) (citing both *Black's Law Dictionary* (5th ed) and *The American Heritage Dictionary* (2d ed, 1982)); cf. *Fire Ins Exchange v Diehl*, 450 Mich 678, 685 (1996) (distinguishing *Freeman* on other grounds). Indeed, the *Black's Law Dictionary* definition cited in *Freeman* notes that

"an" is "equivalent to 'one' or 'any,' " and observes that even " '[t]he most unlettered persons understand that "a" is indefinite, but "the" refers to a certain object.' " *Freeman*, 432 Mich at 699 n 31, quoting *Black's Law Dictionary* (5th ed). Here, we know the word "an" does not mean simply "one"—as in, impose *one* indeterminate sentence, but not *two* indeterminate sentences—because the Legislature was careful *in the very next clause* to use a number when it meant "one"—"the minimum of which is *1* day." MCL 750.335a(2)(c) (emphasis added).

By using the indefinite article "an" to modify "indeterminate term," instead of the definite article "the," the Legislature made clear that it was not specifying the specific indeterminate sentence that must be given, but rather was ordering the imposition of an unspecified indeterminate term. An "indeterminate term" is a sentence imposed by giving an indeterminate sentencing range. *People v Lowe*, 484 Mich 718, 723 (2009) (concluding that "the indeterminate sentence that a defendant typically receives under Michigan law constitutes a 'term' " in "ordinary parlance," as demonstrated by "the hundreds of decisions in which a defendant's indeterminate sentence range is consistently referred to as a 'term' "). An indeterminate sentence is "a sentence 'of an unspecified duration, such as one for a term of 10 to 20 years.' " *People v Lockridge*, 498 Mich 358, 380 (2015) (citing an earlier case's quotation from *Black's Law Dictionary* (8th ed)). As this quote from *Lockridge* illustrates, if an ordinary English speaker were asked to give an example of *an* indeterminate term, she could respond with a wide range of possible indeterminate-sentence ranges, all of which would fall within the plain meaning of the phrase.

B. The minimum-maximum clause sets the range from within which an indeterminate term is selected; it does not specify the exact indeterminate term of one day to life.

The next question is whether the minimum-maximum clause that follows should be read to *explain* the phrase "an indeterminate term" or to *contradict* it. In other words, does the phrase "the minimum of which is 1 day and the maximum of which is life" (1) set the bounds from within which the judge may choose *an* indeterminate term or (2) specify that the judge must chose *the* specific term of exactly one day to life?

The first option is the more reasonable one. The clause is an explanatory phrase, placing some limitations on which indeterminate terms are allowable. This reading gives effect to all the words in the explanatory clause: it sets the "minimum," creating a floor, that any given indeterminate sentence could have ("1 day") and it sets the "maximum" that any given indeterminate sentence could have ("life"). It gives effect to the word "is"—"the minimum of which *is* 1 day—by recognizing that the clause imposes a mandatory limit on what the minimum could be for a given sentence; it creates the least possible severe sentence and prohibits a judge from awarding probation as the minimum for an indeterminate sentence.

(Separate from the text of § 335a itself, a different statute requires that "[t]he maximum penalty provided by law shall be the maximum sentence in all cases except as provided in this chapter," MCL 769.8(1) (emphasis added), and so provides an additional limitation that turns the ceiling set in § 335a(2)(c) into the specific maximum sentence in all § 335a cases. But the fact that MCL 769.8(1) says nothing

about the "minimum sentence" confirms that § 335a merely sets the minimum penalty possible, not the actual minimum sentence that must be imposed.)

The second option—that the indeterminate term must be *precisely and only* one day to life—is not a reasonable reading, because it treats § 335a as presenting a Hobson's choice. Under that interpretation, the statute would first tell the judge that he gets a choice (he must sentence the offender to some *indefinite* indeterminate sentence) but then would immediately contradict itself by telling him that he does not get a choice (he must sentence the offender to *the specific* indeterminate sentence of one day to life). That illogical interpretation would read the text as calling for any unspecified term, so long as it is the specific term found in Hobson's first stall—the specific term of 1 day to life.

When trying to determine whether an interpretation of a statute is a reasonable one, courts routinely reject interpretations that would create a Hobson's choice. E.g., *Shockley v CIR*, 686 F3d 1228, 1238 (CA 11, 2012) ("we decline to interpret the statute such that the IRS is faced with the aforementioned Hobson's choice"); *Copley Press, Inc v Superior Court*, 39 Cal 4th 1272, 1296 (2006) (rejecting an "interpretation [that] presents peace officers with a Hobson's choice" because it was "from the perspective of both statutory language and practical consequences, . . . not the more reasonable one"); *In re R Eric Peterson Const Co, Inc*, 951 F2d 1175, 1180 (CA 10, 1991) ("Under Quintek's interpretation of consent, the debtor would face a Hobson's choice . . . . Nothing in the language of the statute requires us to give it such an illogical reading."); *John Hancock Life Ins Co v Abbott Labs*,

863 F3d 23, 40 n 5 (CA 1, 2017) (concluding that "the district court's reading is less reasonable than a plain-language reading" because "[u]nder the district court's construction," "Hancock faces a Hobson's choice"). They do this based on the commonsense understanding that legislatures are not trying to play tricks when drafting statutes, but rather are trying to communicate in a logical way. Legislatures do not give discretion with one hand, only to take it back with the other.

C. The fact that § 335a(2)(c) has been included in the sentencing guidelines is consistent with § 335a(2)(c) giving a trial court discretion to exercise within a specific range.

The fact that the Legislature specifically included § 335a in the sentencing guidelines, as the Legislature did in 1998 PA 317, confirms that the Legislature intended for the sentencing judge to be able to choose more just the specific term of 1 day to life. If the specific sentence of 1 day to life were the *only* choice, it would make no sense for the Legislature to set out guidelines for what sentence is appropriate under § 335a(2); if the Legislature had mandated only one choice, then that one choice would be the only appropriate sentence. In contrast, if § 335a is discretionary, then including it in the guidelines makes sense: there is some discretion to be channeled by the guidelines, namely *which* indeterminate term the judge chooses.

Reading § 335a as discretionary is also consistent with the fact that the Legislature affirmatively recodified indecent exposure by a sexually delinquent person in 2005 when amending MCL 777.16q; in the amendments in 2005 PA 300

and 302, the Legislature updated MCL 777.16q with the new statutory citation produced by the revision to § 335a(2)(c), at the same time the Legislature changed "may be punishable" in § 335a(2)(c) to "is punishable." But the wording "may be punishable" was never the language that created discretion, so this was not a substantive change; rather, it has always been the words "an indeterminate term" that give sentencing courts discretion to choose which indeterminate sentence was appropriate. And as already explained, the fact that this crime (committing indecent exposure while a sexually delinquent person) *must* be punished by an indeterminate sentence does not answer the question of *which* indeterminate sentence the judge must choose.

In the end, if § 335a is mandatory and requires a one-size-fits-all 1-day-to-life sentence, then putting § 335a into the guidelines would make little sense. Rather than reading it as mandatory by virtue of a Hobson's choice—a Hobson's choice that the Legislature would have doubled down on by putting § 335a in the guidelines—it is best read as a discretionary provision that fits naturally with the Legislature's efforts in the guidelines to limit judicial discretion. And because § 335a(2)(c) is discretionary, it does not conflict with the now-discretionary guidelines but rather works in harmony with the guidelines. (And thus the conclusion in *People v Campbell*, 316 Mich App 279 (2016), which held that § 335a(2)(c) conflicts with the guidelines because § 335a(2)(c) is mandatory, is wrong.)

D. The decisions that have read § 335a(2)(c) as mandatory are unpersuasive and do not account for the Legislature's decision to use the phrase "an indeterminate term."

Consistent with the plain-language reading outlined above, a number of Michigan courts have given indeterminate sentences other than 1 day to life under the set of statutes that use this sort of language. E.g., *People v Borders*, 2003 WL 22928724, at *1 (Mich Ct App, Dec 11, 2003) (affirming a sentence of "seven to fifteen years' imprisonment" for defendant convicted as a sexually delinquent person under MCL 767.61a); *People v Messina*, 71 Mich App 30, 31 (1976) (affirming a sentence of "5-10 years in prison" for someone convicted as a sexually delinquent person under MCL 750.336). But against all this on the plain-language side of the ledger, this Court has assumed § 335a was mandatory, and the Court of Appeals has concluded it was mandatory without fully analyzing its text.

This Court in *People v Butler*, 465 Mich 940 (2001), issued a one-page opinion that vacated a sentence of 2 to 20 years for resentencing because "there is no alternative to the mandatory indeterminate sentence of one day to life in prison where the trial court chooses to incarcerate a person convicted under MCL 750.335a and MCL 750.10a." *Id*. But it is not clear it actually decided this question; rather, it appears the Court simply assumed the point, as the prosecution never responded to the *Butler* application (nor was it ordered to respond), so no party in *Butler* appears to have raised the fact that the indefinite article means that more than one indeterminate term was possible.

Even if *Butler* does constitute a decision on whether § 335a imposes "the mandatory indeterminate sentence of one day to life in prison," 465 Mich at 940, it

should carry little weight as a matter of stare decisis, see *Robinson v City of Detroit*, 462 Mich 439, 463–65 (2000), because the Court provided no reasoning supporting that decision; it simply asserted the proposition without any textual analysis or explanation. Cf. Const 1963, art 6, § 6 ("Decisions of the supreme court . . . shall contain a concise statement of the facts and reasons for each decision . . . ."). And there has been little reliance on *Butler*; it has been cited only one time, in *People v Buehler*, 268 Mich App 475, 483 n 2 (2005), judgment vacated 474 Mich 1081 (2006), and even in that now-vacated instance it was a "cf." citation, which means the Court of Appeals thought the case "supports a proposition different from the main proposition but sufficiently analogous to lend support." BlueBook Rule 1.2. (19th ed 2010). Indeed, *Butler* is obscure enough that this Court asked the parties to address whether § 335a is mandatory without mentioning *Butler*. In the end, *Butler* is much like the case overturned in *City of Coldwater v Consumers Energy Co*, 500 Mich 158 (2017): "It has never been cited by [this Court] or the Court of Appeals for the point of law on which we overrule it," and "when discussing reliance, 'it is to the words of the statute itself' that the public first looks for guidance, and these words must be at the center of our analysis," so it *Butler* itself that "has disrupted the reliance interest." *Id*. at 162; see also *People v Lively*, 470 Mich 248, 255 (2004) (noting "that many prior decisions of this Court have not analyzed the statutory language" and then overturning seven prior decisions that had read a materiality requirement into a statute's text).

The Michigan Court of Appeals in *People v Kelly*, 186 Mich App 524 (1990), also concluded § 335a is mandatory, focusing on the word "shall," which "generally denotes a mandatory duty." *Id.* at 529 (interpreting version of § 335a which provided that a sexually delinquent person "may be punishable" by "an indeterminate term, the minimum of which shall be 1 day and the maximum of which shall be life"). But the Court of Appeals overlooked the indefinite article "an," even going so far as to replace that word with the definite article "the" when attempting to justify its interpretation: "the statute at issue provides that the minimum of *the* indeterminate term *shall* be one day and the maximum *shall* be life." *Id.* (first emphasis added).

In the end, the better reading of this text is the one outlined above: § 335 requires the court to impose an indeterminate sentence, where the minimum term is at least 1 day and the maximum of which is not more than life. Section 335a's text does not state that "*the* indeterminate sentence is one day to life," and it does not impose a Hobson's choice that whipsaws the reader from a choice of possible indeterminate terms to no choice at all.

II. At the very least, § 335a is ambiguous, and this Court should construe it to avoid a conflict with the Guidelines.

The foregoing analysis has focused on the Legislature's choice to use the indefinite article "an." But as noted earlier, a reader might focus on the mandatory word "is" and think that the minimum must be *exactly* 1 day. But setting aside the Hobson's choice point, the fact that the word "is" is mandatory merely sets up a

conflict between the words "an" and "is"; the former word says the minimum for a given sentence is indefinite and not fixed, but the latter suggests the minimum *is* definite and fixed for every sentence imposed: the minimum "*is* 1 day."

All this reasoning would establish, though, is that there is ambiguity; at most, it would say there are two equally plausible ways to read the statute, one of which views the statute as discretionary and one as mandatory. That conclusion would bring another interpretive rule into play. The mandatory interpretation would set up a conflict with the fact that the Legislature included § 335 as a crime covered by the guidelines; that view would interpret the statute to be mandatory, but subject to a discretionary sentencing regime. The fact that the mandatory interpretation would conflict with its inclusion in the sentencing regime that governs discretionary decisions implicates the canon that statutes should be construed to be harmonious, not to conflict: "If two provisions can . . . be construed to avoid conflict, that construction should control." *People v Hall*, 499 Mich 446, 454 (2016) (citation omitted). Here, reading § 335a as granting a trial court discretion to choose any indeterminate sentence, so long as it is at least 1 day and not more than life, would avoid any conflict; even in the pre-*Lockridge* days when the guidelines were mandatory, they could be applied within that range and so satisfy both statutes. Because it is thus possible to construe them to avoid conflict, "that construction must control." *Id.*

CONCLUSION AND RELIEF REQUESTED

This Court should hold that § 335(2)(c) is a discretionary statute that requires the sentencing court to impose an indeterminate sentence but that gives the court a choice as to which indeterminate sentence it imposes, so long as the sentence falls within the minimum of 1 day and the maximum of life.

Respectfully submitted,

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